In his grounds of judgment the learned Magistrate stated :—

"I hold that the defendant is not a statutory tenant but a tenant under a contract and as such he is bound by the terms of the agreement of tenancy. That being so, I am satisfied that the plaintiff has made out a case for possession under section 13(1)(b) of the Control of Rent Ordinance, 1948, to justify an order for ejectment to be made against the defendant."

The questions for consideration therefore are: (1) whether the tenant of a term certain holding over after that term becomes a statutory tenant by virtue of section 15(a) of the Ordinance and can claim the protection of the Ordinance, and (2) whether the breach of an agreement to give up possession at the end of the term is one of the breaches envisaged by the legislature in section 13(1)(b) of the Ordinance.

With regard to the first point, Lord Sterndale, M.R., in the Court of Appeal in *Cruise v. Terrell*[1] said :—

"It is contended that the Act (i.e. the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which is very similar to our Control of Rent Ordinance) does not apply in any way to a tenancy for a term certain, and therefore the letting was not within the Act. I cannot understand how it can be said that the sections of the Act which apply to all lettings do not apply to a letting for a term certain. Such a contention is contradicted by expressions which occur in various parts of the Act. I see no ground for that contention."

With regard to the second point, it was settled by the Court of Appeal in *Remon v. City of London Real Property Co. Ltd.*[2] where Scrutton, L.J., said :—

"The Act of 1920 has made some progress in the development of this new statutory tenancy. Under the original Acts the statutory tenant was allowed to stay if he 'performed the other conditions of the tenancy.' But one of those conditions might be to give up the premises at the expiration of the tenancy by agreement. To insist on this as a condition would be to render the whole Act nugatory, and Astbury, J. in **Artizans Dwellings Co. v. Whitaker**[3] held that this part of the conditions of the tenancy was inapplicable."

I have therefore come to the conclusion that the appellant by not giving up possession at the end of the fixed term has not broken an obligation of the tenancy as envisaged by section 13(1)(b) of the Ordinance and that he became a statutory tenant by virtue of section 15(a) and is entitled as such to the protection given by the Ordinance; further that as his statutory tenancy has not been determined the respondent is not entitled to possession of the premises.

For the above reasons I allow the appeal with costs here and in the Court below.

Appeal allowed.

THUNG FUN v. LOOI FONG UM.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Knight, J.) May 14, 1952]

[J.B. — Civil Appeal No. 10 of 1952]

Landlord and Tenant Control of Rent Ordinance, 1948, ss. 15 and 16 — Application of — Rent in arrears for more than 14 days — Demand for rent — Whether necessary.

In this case the appellant is the owner of No. 8 Jalan Leong Yong, Segamat. The respondent is the tenant of the premises and has been the tenant since 16th September 1945. The tenancy was a verbal one and the rent is payable at $75 per mensem. On the 28th February, 1951 rent for the month of February became due and payable and the appellant asked his younger brother to demand it from the respondent who said he had no money and that two or three days later he would send the rent. No payment was made. On 28th March, 1951 appellant through his Solicitors sent to the respondent a Notice to Quit.

On the 3rd of April, 1951 the appellant received a sum of $225 from the respondent being rent for the month of February, March and April 1951. This payment was accepted by the appellant without prejudice to his claim for possession of the premises, but no rent was paid or received beyond that date.

On the 6th of May, 1951 the appellant filed a plaint against the respondent claiming an order for (a) the possession of the said premises; (b) mense profits and (c) costs of the suit. The Judgment was entered for the appellant in the Sessions Court and this decision was reversed on appeal by the High Court.

The Court of Appeal was unable to ascertain from the record what facts were found by the learned President of the Sessions Court and therefore ordered that the case be tried de novo by the Sessions Court with directions to make at the trial definite finding of facts on the following matters:

(i) Was there any agreement as to whom the rent should be paid, if so where?

(ii) Was there a demand for rent on the premises on the 28th February, 1951?

The Sessions Court when arriving at a decision will take these finding of facts into consideration.

Appeal allowed with costs. **Kor Aik v. Tay Aik Liok**[1] doubted.

Cases referred to :—

(1) *Kor Aik v. Tay Aik Liok* (1951) M.L.R. 103.

COURT OF APPEAL.

F. R. N. H. Massey and H. B. Ball for the appellant.

L. A. J. Smith for the respondent.

Cur. Adv. Vult.

Mathew, C.J. : — This appeal arises out of a claim for the possession of premises known as No. 8 Jalan Leong Yong, Segamat. Judgment was entered for the

plaintiff (the present appellant) in the Sessions Court and this decision was reversed on appeal by the High Court. It is not possible to ascertain from the record what facts were found by the learned President of the Sessions Court. In the circumstances the only order that can be made by this Court is to allow the appeal and order the case to be tried *de novo* by the Sessions Court. When the case is heard again, the Sessions Court should make definite findings of fact on the following matters :—

(i) Was there any agreement as to where the rent should be paid, if so where?

(ii) Was there a demand for rent on the premises on the 28th of February, 1951?

The Sessions Court when arriving at a decision will take these findings of fact into consideration.

The appeal is allowed. The appellants will have the costs here and before the High Court; the costs in the Sessions Court will follow the event.

Sir Charles Murray-Aynsley, C.J., (Singapore) : —I have had the opportunity of reading the judgment of the Chief Justice of the Federation. I agree and have nothing to add except to say that I am doubtful whether the judgment in the case of *Kor Aik v. Tay Aik Liok*[1], is correct in so far as it holds that the present Control of Rent Ordinance relieves a landlord of any common Law obligations.

Knight, J. : —I have had the advantage of reading the judgment of the learned President in this appeal with which I agree and have nothing to add.

Appeal allowed.

In re CHUNG LIT & CHUNG AH KAM.

[Rev. Crim. Juris. (Spenser Wilkinson, J.) May 16, 1952]
[Penang — Criminal Revision No. 3 of 1952]

Municipal Ordinance (Cap. 133), ss. 169, 246(1) and 247(6) — Abatement of nuisance — "Being premises in a ruinous and dangerous state" — Meaning of — Closing Order is a criminal cause or matter — Proof required before Closing Order can be made.

By a Notice dated 21st June, 1950, purporting to be issued under sections 169 and 246(1) of the Municipal Ordinance the landlord of premises was required within one month to abate a nuisance "being premises in a ruinous or dangerous state." On his failure to comply with it he was served with a summons under section 246. To this he pleaded guilty and an Abatement Order was made. This Abatement Order was also disregarded and on 7th March, 1951, the magistrate made a Closing Order under section 247(6) to be carried out within three months. Copies of this Closing Order were served on the occupiers of the premises.

Held, that (1) section 169(2) is intended to cover only urgent situations such as would arise in an earthquake, tempest, fire, flood or some unusual occurrence or the sudden discovery of a hidden defect; (2) section 246 does not cover the complete demolition of a building; it relates only to the carrying out of remedial work. The Notice of 21st June, was, therefore, invalid; (3) although section 246(1) provides alternatives as to the persons on whom service of a Nuisance Notice is to be made section 246(3) provides that in case of structural defects the owner should be served and this cannot be taken to mean that the occupants must also be served. Nor is it necessary, at the hearing of an application for a Closing Order, for the Court to give the occupants an opportunity to be heard; (4) for the purposes of section 256 a Closing Order is a criminal cause or matter but the occupiers not being parties to it have no right of appeal unless such right is conferred by statute; and (5) before a Closing Order is made there must be strict proof of unfitness for human habitation caused by a nuisance and in considering the fitness or otherwise of the premises the magistrate must bear in mind the authorities on the point and, in particular, the observations of the House of Lords in Hall v. Manchester Corporation[5].

Semble: If on the complaint that the owner had not complied with a Nuisance Notice the magistrate makes not a Closing Order but an Abatement Order he has no jurisdiction to make a Closing Order on a further complaint for the same defect.

Cases referred to :—

(1) *H. Nunes v. Song Kee Chuan* (1935) M.L.J. 132; (1935) S.S.L.R. 107.

(2) *Tan Hoon Swee v. Public Prosecutor* 6 F.M.S.L.R. 191 at p. 197.

(3) *Tan Lian v. Rex* (1947) M.L.J. 196.

(4) *Rex v. West Kent Quarter Sessions Appeal Committee* (1951) 2 T.L.R. 470 at p. 472; (1951) 2 All E.R. 728.

(5) *Hall v. Manchester Corporation* 113 L.T. 465.

CRIMINAL REVISION.

F. G. Pooley for the Municipality.

P. C. Chew for the landlord.

Lim Kheng Kooi for the petitioners (tenants).

Cur. Adv. Vult.

Spenser Wilkinson, J. : —This is a revision which arose out of a petition by one Chung Lit and one Chung Ah Kam, tenants of Nos. 267 and 269 Chulia Street respectively, who were summoned before the Magistrates' Court on a charge of having failed to comply with an Order to cease inhabiting the premises. These Summonses had been mentioned before the Magistrate on various occasions but had not yet been heard, and I, therefore, decided to remove the proceedings into the High Court under the provisions of section 57 of the Courts Ordinance. My chief reason for exercising my powers of revision in this case and at this stage was that I had doubts as to whether occupiers served with a Closing Order had a right to